IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

Crl.L.P..No. 670 of 2006()

CC.277/2003 of J.M.F.C.-II, KOLLAM
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PETITIONER/COMPLAINANT

P.G.ARAVINDAKSHAN NAIR,
`V' NIVAS, M.G.NAGAR, KUREEPUZHA, KOLLAM.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: ACCUSED AND STATE
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1. K.G.SIVADASAN (ADOOR),
Q.S.W.GR.II ALIED COMPANY, KUNDARA P.O.,
KOLLAM DISTRICT.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2-BY P.P.SRI.C.M.NAZAR

THIS CRIMINAL LEAVE PETITION HAVING COME FOR ADMISSION ON 13/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

Crl. L.P.No.670 OF 2006

Dated this the 13th day of December, 2006.

O R D E R

Petitioner is the complainant in C.C.No.277/2003 on the file of the Judicial Magistrate of First Class-II, Kollam. It is revealed from the complaint that the petitioner had given an amount of Rs.85,000/= to the 1st respondent and in discharge of the above said debt, the 1st respondent had issued Ext.P1 cheque. When the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. On receipt of the intimation from the Bank of the petitioner, petitioner had taken steps to recover the amount from the 1st respondent. But, in spite of notice, the amount covered by the cheque was not repaid by the 1st respondent. Hence, the complaint filed. To prove the case against the 1st respondent, the complainant/petitioner was examined himself as PW1 and produced Exts.P1 to P6. The 1st respondent himself was examined as PW1 and marked Ext.D1 on receipt of the notice alleged to have sent by the petitioner. After

the trial, the learned Magistrate held that as per Section 138 (b) of the N.I.Act, 1881, it is incumbent on the part of the complainant to issue a notice within the prescribed time on receipt of the intimation of dishonour of the cheque demanding payment of the amount covered by the cheque. But, the learned Magistrate found that no notice in time was issued to the 1st respondent. The learned Magistrate had came to a conclusion that as the intimation was received on 28.10.2002, the notice should have been given to the 1st respondent within 15 days of the receipt of such intimation. But, it is found by the court below that the notice was given only on 15.11.2002. Hence, the trial court found that no statutory notice was served on the 1st respondent. The petitioner failed to prove any case against the 1st respondent. Accordingly, the 1st respondent was acquitted.

On an over all consideration of the entire evidence and the grounds urged by the learned counsel appearing for the petitioner, this Court is of the view that the judgment of the trial court does not require any interference. Accordingly, the

petition for leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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